

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling on Regulatory)	WT Docket No. 08-7
Status of Wireless Messaging Service)	

**COMMENTS OF THE CITY OF NEW YORK HIGHLIGHTING THE IMPORTANCE OF WIRELESS MESSAGING
SERVICES FOR THE PURPOSES OF PUBLIC SAFETY AND EMERGENCY RESPONSE**

Filed Ex Parte on December 5, 2018

Introduction and Background

1. The City of New York ("City"), through comments filed by the City's Emergency Management, Police, and Fire Departments has been actively engaged with the Federal Communications Commission ("the Commission" or "the FCC") on advocating for improvements to the nation's Emergency Alert System ("EAS") and Wireless Emergency Alert System ("WEA").¹ The City also appreciates the Commission's efforts to protect consumers from unsolicited and unwanted phone calls and text messages ("spam"), as set forth in the Commission's Declaratory Ruling dated November 21, 2018 ("the Ruling"). However, the City is concerned that the Ruling in this matter creates the potential for unintended consequences that could negatively impact the emergency management and public safety community's ability to communicate with their constituents during times of emergency and disaster. Therefore, the City respectfully requests that the Ruling be modified as set forth below to more clearly preserve existing emergency messaging services.
2. The EAS and WEA are extremely powerful tools that are key elements of the City's emergency public information strategy, and the City has historically and specifically reserved these messaging tools for only the most critical messages, where life safety is at risk and protective action information needs to be delivered.² Other important messages are distributed to opt-in subscribers to the City's emergency notification system, Notify NYC (www.nyc.gov/notifynyc). Subscribers to this system elect to receive messages via e-mail, telephone call, SMS, facsimile, and/or social media. Of the system subscribers, there are 104,682 accounts that have one or more mobile phone numbers enrolled for the purposes of receiving SMS messages.³ Many other state, local, tribal, and territorial

¹ See, for example, filings from the City of New York and its agencies in Commission Dockets 15-91 *Improving Wireless Emergency Alerts* and 15-94 *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*.

² See *Comments of the New York City Emergency Management Department* in response to the Further Notice of Proposed Rulemaking on Improving the Effectiveness of EAS and WEA, dated September 10, 2018 at 12. *Note*: Since the time of this filing, NYC has utilized WEA two additional times in response to a suspicious package that required part of Manhattan's Upper West Side to shelter in place.

³ Notify NYC statistics valid as of December 3, 2018.

jurisdictions, including most – if not all – densely populated urban centers have similar opt-in systems.⁴ The opt-in procedures for these systems vary, but are typically handled in two ways: (a) by enrolling on an official website hosted by the sponsoring government agency and/or (b) by enrolling via an SMS short code with a keyword. Most City subscribers opt-in via option (a) but the City has recently implemented option (b) for certain discrete events.⁵ The City sends out more than 1,500 notifications each year via Notify NYC resulting in tens of millions of distinct SMS messages to subscribers.

3. Mass notifications systems, including and especially SMS delivery, are not only utilized for emergency public messaging but also to provide rapid and redundant notification to government employees and partner organization for the purpose of emergency response. In addition to Notify NYC, the City has 41 agencies and discrete programs and has imported the contact information for more than 200,000 employees into our enterprise mass notification system. Agencies utilize the mass notification service for a wide range of announcements and warnings from critical day to day operations to keeping staff informed of continuity of operation plan activations, to recalling staff for emergency purposes such as working in evacuation centers and shelters when a hurricane is approaching the City. Simply put, successful delivery of SMS messages to internal and external recipients is more than another manifestation of “...one of the most popular forms of communications for Americans...”⁶, it is about saving lives and mobilizing core government functions at a moment’s notice when necessary.

POTENTIAL PUBLIC SAFETY CHALLENGES ASSOCIATED WITH SMS DELIVERY DUE TO THE COMMISSION’S DECLARATORY RULING

4. State, local, tribal, and territorial jurisdictions that have mass notification programs for internal and/or external communication do not own and/or maintain their own infrastructure (e.g., cloud-based databases, load balancers, mass dialers, SMS aggregators, etc.) for those programs. Instead, jurisdictions enter into contracts with private companies that specialize in mass notification.⁷ The referenced and similar companies, regardless of specific design, serve as the intermediary between the message sender (e.g., the City of New York), downstream aggregators like the Petitioner in the matter before the Commission, and the recipient.
5. As there are many emergency mass notification providers which often rely on the same downstream aggregators, the City is concerned that, absent a carefully considered regulatory framework, efforts

⁴ See, for example, AlertLA (<http://alert.lacounty.gov>), AlertDC (<https://hsema.dc.gov/page/alertdc>), Miami-Dade Emergency Alerts (<https://www.miamidade.gov/alerts/>); ReadyPhiladelphia (<https://www.phila.gov/departments/oem/programs/readyphiladelphia/>), AlertSF (<https://sfdem.org/public-alerts>).

⁵ See, for example, a City of New York Press Release encouraging attendees of the 2018 Macy’s Thanksgiving Day Parade to enroll for updates/emergency information via Short Code. https://www1.nyc.gov/site/em/about/press-releases/20181120_pr_nyem-health-depts-urge-ny-prepare-extreme-cold-thanksgiving.page. Accessed December 2, 2018.

⁶ Declaratory Ruling at 1.

⁷ See, for example, Everbridge (www.everbridge.com), OnSolve (www.onsolve.com), Rave (www.ravemobilesafety.com), BlackBerry AtHoc (www.athoc.com).

by commercial mobile service providers (“CMSP” or “CMSPs”) to curtail spam have the potential to prevent the delivery of critical messages to recipients that need them and have either opted in to the system via the methods described above⁸ and/or have been imported into the system as part of a sanctioned program. As a result, the City strongly recommends the Commission include, as part of its Ruling, a requirement that the Petitioner, similarly situated aggregators, and the CMSP community work with the emergency management and public safety community and the Commission to adopt a regulatory framework that:

- a. Requires that SMS messages from emergency management/public safety entities be appropriately identified by aggregators and CMSPs in order to prevent inadvertent blocking by spam-control filters;
- b. Requires that SMS messages from emergency management/public safety entities not be treated as spam;
- c. Requires that SMS messages that are treated as spam be flagged for the aggregator which, in turn, would allow the aggregator to inform their upstream customer;
- d. Requires that CMSPs notify the message sender that messages are being flagged as spam;
- e. Requires that CMSPs transparently establish and post their guidelines for what constitutes spam (e.g., message volume, throughput, content, etc.) and work with aggregators to proactively “whitelist” messages known to be coming from emergency management and public safety entities;
- f. Requires that CMSPs establish mechanisms for emergency management/public safety entities to report blocked deliveries *and* mechanisms to rapidly correct such blocked deliveries.

COMMISSION MUST ENSURE THAT THIS DECLARATORY RULING DOES NOT IMPACT WIRELESS EMERGENCY ALERT DELIVERY

6. The City appreciates the Commission’s assertion that WEA messages are *sui generis* from Wireless Messaging Services and seemingly not impacted by this ruling.⁹ However, the City urges the Commission to exercise extreme caution in this regard. While most CMSPs have engineered their networks to support WEA delivery via broadcast technology (point to multipoint), such an approach is **not** required by Commission rules. In fact, the Commission rules are technologically agnostic on what approach CMSPs utilize to deliver WEA messages to their subscribers.¹⁰ In prior discussions with staff from the Federal Emergency Management Agency (“FEMA”), the City became aware that some CMSPs utilize SMS for WEA delivery. Further, as the Commission rules are technologically agnostic, CMSPs have the option to alter their delivery approach. Given the critical nature of WEA delivery, the City implores the Commission to **specifically exclude** such messages from being treated as spam.

COMMISSION MUST CLARIFY RULING RELATED TO TEXT TO 911 SERVICES

⁸ See paragraph 2.

⁹ Declaratory ruling at Footnote 174.

¹⁰ See, generally, 47 CFR 10.

7. The City also requests that the Commission clarify its intentions regarding text to 911 and the current rules, and further evaluate and explain any impacts of the order on public safety and text to 911 programs.

CONCLUSION

8. The City continues to appreciate the Commission's efforts to improve the capability and reliability of the nation's emergency alerting systems and improve the consumer's experience by taking steps to prevent spam calls and messages. However, given the widespread adoption of emergency mass notification systems, limited number of downstream aggregators, and volume of messaging that transverse these systems, the City feels strongly that the Commission's Ruling in this matter must include appropriate protections to ensure that recipients enrolled in these systems continue to receive messages. Accordingly, the City respectfully requests that the Ruling be modified to more clearly preserve existing emergency messaging services. The City would welcome the opportunity to engage in further dialogue with the Commission, CMSPs, and broader emergency messaging community on this topic.